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CLEARINGHOUSE RULE 96-113

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. Section NR 103.08 (1m) refers to the procedures identified in the “Basic Guide to Wisconsin’s Wetlands and Their Boundaries.” A Note to the rule states that the guide is based upon the “Corps of Engineers Wetlands Delineation Manual, 1987.” The department should ensure that the requirements of s. 227.21, Stats., are met.

b. The amendment to s. NR 299.05 (4) is confusing. Paragraph (a) is deleted and par. (b) is renumbered to be par. (a). However, s. NR 299.05 (4) does not contain any additional paragraphs. When a unit of a rule is divided into smaller subunits, at least two subunits should be created. [See s. 1.03, Manual.]

c. It is inappropriate to use an ellipsis to indicate material that is not amended by the rule. All of the existing text should be included in ss. NR 299.05 (5) and 504.04 (2) (a).

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The definition of “artificial wetland” defines these wetlands as a type of “landscape feature.” It would be simpler and more direct to refer to artificial wetlands as an “area” where certain conditions occur.

b. The definition of “artificial wetland” refers to the landscape feature where hydrophytic vegetation “may be present.” This does not appear to require that hydrophytic vegetation

be present in all cases. Can an area be an artificial wetland if it does not have hydrophytic vegetation?

c. The definition of “artificial wetland” may require hydrophytic vegetation “as a result of human-induced activities.” This might be construed to require that the hydrophytic vegetation occur only as a result of human activities. Can an area be an artificial wetland if the hydrophytic vegetation occurred naturally but was modified or increased in area by human activity? Also, “induced” appears to be superfluous.

d. The definition of “artificial wetland” refers to human-induced “activities to” the landscape or hydrology. Would “modifications” be a better word?

e. The definition of “artificial wetland” refers to human-induced activities to the “landscape or hydrology” (emphasis added). Is it possible to create conditions that are conducive to hydrophytic vegetation by altering the landscape if no hydrologic changes occur?

f. In general, the department should consider whether the definition of “artificial wetland” in s. NR 103.02 (1m) is necessary. This term is used only in s. NR 103.06 (4), as created by the rule. That definition, or a modified version of it, could be incorporated into the introductory paragraph of the new subsection.

g. Section NR 103.06 (4) creates exemptions from “the requirements of this chapter.” Some provisions of ch. NR 103 are readily identified as “requirements,” and other provisions do not appear to be “requirements.” It would be helpful in understanding this exemption if the requirements to which the exemption applies were specified.

h. The rule creates an exception to the exemption in s. NR 103.06 (4) if the department determines that the artificial wetland has a significant functional value under s. NR 103.03. However, s. NR 103.03 refers to uses of wetlands as well as to functional values. Should s. NR 103.06 (4) also refer to uses of wetlands?

i. Section NR 103.06 (4) refers at several places to “uplands.” If this term has a reasonably precise technical meaning or if this term has a significant substantive effect in determining the scope of the exemption in s. NR 103.06 (4), the term should be defined.

j. The exemption in s. NR 103.06 (4) (a) refers to sedimentation and stormwater retention basins operated and maintained “only for” sediment detention and flood storage purposes. Is it the department’s intent to exclude sedimentation and stormwater detention basins that may have additional functions, such as aesthetic value in an urban area?

k. Is there any reason to use the term “active” in s. NR 103.06 (4) (b) and “actively maintained” in s. NR 103.06 (4) (c)? If there is no difference in meaning, the same term should be used. Also, it is not clear what it means to be “actively maintained.” A farm drainage or roadside ditch may function adequately for many years without maintenance. At what point does a farm drainage or roadside ditch cease to be actively maintained?

l. Section NR 103.06 (4) (a) to (d) refer to areas in which the entire area may be considered a type of artificial wetland. However, in s. NR 103.06 (4) (e), nonmetallic mining opera-

tions are not a type of artificial wetland, although artificial wetlands may be included within a nonmetallic mining operation. This paragraph does not fit well with the introductory paragraph.

m. “Non-metallic” should not be hyphenated in s. NR 103.06 (4) (e). Also, “uplands” should be plural and “areas” should be deleted.

n. Should “conducted” be replaced by “made” in the first sentence of s. NR 103.08 (1m)?

o. The new material inserted in s. NR 299.05 (5) is confusing. The request for a contested case hearing is required to include a written statement giving reasons why “the department’s determination” violates certain standards. Rather, it appears that a person requesting a contested case hearing would assert that the proposed activity would or would not violate the standards and that the department’s determination regarding a potential violation of the standards by the activities was erroneous. Also, the third sentence should be rewritten to read: “The request for hearing shall also include a written statement specifying that the petitioner will appear and present information supporting the petitioner’s objections in a contested case hearing.”